

**Before the  
Federal Communication Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition For Declaratory Ruling That</b>	)	<b>WC Docket No. 02-361</b>
<b>AT&amp;T's Phone-to-Phone IP Telephony</b>	)	<b>DA 02-3814</b>
<b>Services Are Exempt From Access Charges</b>	)	

**Comments Of:  
Fred Williamson and Associates, Inc. ("FW&A")  
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC  
H&B Telephone Communications, Inc., a Kansas ILEC  
Moundridge Telephone Company, Inc., a Kansas ILEC  
Pine Telephone Company, Inc., an Oklahoma ILEC  
Pioneer Telephone Association, Inc., a Kansas ILEC  
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC  
Twin Valley Telephone, Inc., a Kansas ILEC**

## INDEX

	<u>Page</u>
<b><i>I. BACKGROUND AND SUMMARY OF AT&amp;T'S PETITION.</i></b>	<b><i>4-7</i></b>
<b><i>II. THERE IS NO BASIS FOR AT&amp;T'S PETITION AND IT SHOULD BE DISMISSED BY THE COMMISSION.</i></b>	<b><i>7</i></b>
<b><i>A. AT&amp;T Is Not Using The Public Internet To Transport Its Service, but Instead Is Using A Private Network With IP Protocol For Transport. The Service Is Not An Enhanced Or Information Service Subject To The ISP Internet Exemption, But Is An Interexchange Telecommunications Service Subject To Access Charges.</i></b>	<b><i>7-9</i></b>
<b><i>B. AT&amp;T Is Purposefully and Fraudulently Misreporting Interexchange Traffic As Local Traffic In Order To Pay Local Termination Charges Rather Than The Applicable Access Charges.</i></b>	<b><i>9-10</i></b>
<b><i>C. The Petition Must Be Dismissed. If Granted, It Would Destroy The Jurisdictional Ratemaking Process And The NECA Pool.</i></b>	<b><i>10</i></b>
<b><i>III. THE RATIONALE AT&amp;T PROVIDES IN SUPPORT OF ITS PETITION HAS NO BASIS IN FACT AND DOES NOT SUPPORT GRANTING THE PETITION.</i></b>	<b><i>11</i></b>
<b><i>A. The Internet Will Not Be Harmed Or Taxed By Enforcing Application Of Access Tariffs On Phone-To-Phone IP Telecommunications Traffic.</i></b>	<b><i>11-12</i></b>
<b><i>B. Unsubstantiated Claims That Access Charges Are Above Cost Do Not Relieve The Commissions Of Their Responsibility To Enforce Approved Tariffs And AT&amp;T Of Its Responsibility To Pay Approved Tariffed Rates For Interexchange Calls.</i></b>	<b><i>12-15</i></b>

	<u>Page</u>
C. The ESP Or ISP Exemption Is Not Applicable To AT&T's Interexchange IP Telecommunications Traffic. Applying The Exemption Would Result In An Unlawful Subsidy From Regulated Local Services To AT&T's Competitive Toll Service.	15-16
D. The Commission's Inaction On VOIP Petitions Does Not Absolve AT&T Of Its Responsibility To Pay Access Charges.	16-17
E. Discrimination Claimed By AT&T, If It Exists, Can Be Resolved By Applying A "Leaky PBX" Surcharge, And Does Not Provide A Basis For AT&T To Obtain An Anti-Competitive Cost Advantage For Its IP Telecommunications By Avoiding Access Charges.	17-19
F. AT&T's Claim That It Must Make Large Investments In Transport Facilities Supplies No Basis To Provide An Unlawful Subsidy For AT&T's Competitive Interexchange Service and For AT&T To Avoid Access Charges.	19-20
G. Problems In Determining The Jurisdiction Of Traffic Can Be Cured By Properly Routing The Interexchange Telecommunications Traffic Over FGD Facilities To The ILECs, As Required By The Access Charge Regime.	20
 IV. <i>CONCLUSION - THE COMMISSION HAS A DUTY TO STOP UNETHICAL AND FRAUDULENT PRACTICES AND TO ENFORCE APPLICATION OF APPROVED ACCESS TARIFFED RATES TO ALL INTEREXCHANGE TELECOMMUNICATIONS TRAFFIC.</i>	 21-22

**I. BACKGROUND AND  
SUMMARY OF AT&T'S PETITION**

In its Petition for Declaratory Ruling, filed on October 18, 2002, AT&T requests that the Commission rule that interexchange phone-to-phone IP telephony services are exempt from the access charges that are applicable to interexchange calls transported over the public switched network. AT&T also requests that the Commission find that AT&T is lawfully delivering (terminating) those interexchange IP telephony calls over end user local services as local calls, not interexchange calls.<sup>1</sup> AT&T asserts that this controversy has been created by the Incumbent Local Exchange Carriers (ILECs) who have attempted (a) To identify and charge access for interexchange IP telephony calls or (b) To disconnect facilities because they were used by AT&T to misreport interexchange traffic subject to access as local traffic. Because of these ILEC actions, AT&T claims that only by granting its petition will uncertainty be removed and thus AT&T will have the economic incentive to invest in transport facilities. AT&T urges the Commission to grant the petition to provide leadership and guidance to the states.<sup>2</sup>

In support of its Petition, AT&T offers the following arguments:

1. Even though the service AT&T provides is not an Internet Service Provider (ISP) Internet service and does not use the public Internet, but simply uses IP protocol over a private network to transport interexchange telecommunications, AT&T claims that the Congressional policy of fostering the growth of the public Internet would be subverted if its emerging IP telephony service is required to pay an access charge “internet tax” that is

---

<sup>1</sup> AT&T Petition, page 1.

<sup>2</sup> Id., page 23

applicable to interexchange services that AT&T transports over the public switched network.<sup>3</sup>

2. AT&T asserts that Internet services and investments (which do not include its telecommunications service that is transported over its private network) that are still evolving would be distorted and disrupted if these services were subjected to allegedly above cost (inflated) and inefficient access charge rate structures. AT&T states that IP phone-to-phone telephony services represent a tiny percentage (1%-5%) of interexchange calling. AT&T wrongly claims that paying access charges rates for transport and termination of interexchange IP telecommunications traffic would risk the financial viability of these interexchange toll services and could block their development and stifle innovation and competition. AT&T asserts that the Commission should allow the services to establish themselves and mature before subjecting them to access charges.<sup>4</sup>

3. Even if it finds that phone-to-phone IP telephony services are telecommunications services, AT&T argues that the Commission has declined to affirmately rule on whether access charges apply to these services until a full record is compiled, and the Commission determines whether some form of access charges can properly, feasibly and nondiscriminatorily be applied. Thus, AT&T mistakenly claims that on a de facto basis, the Commission has allowed IP phone-to-phone providers (which do not even use the public Internet to transport their interexchange toll calls) to fall under the Internet ISP access charge exemption and to use end user local services that are priced closer to costs

---

<sup>3</sup> Id., pages 2, 5, 6.

<sup>4</sup> Id., pages 2, 4, 6, 24, 25, 27.

than alleged inflated access charges.<sup>5</sup> AT&T asserts that the de facto exemption applies to interexchange IP telecommunications calling because the exemption purportedly:

- Protects emerging and evolving technologies from adverse effects of uneconomic charges such as non-cost based and inefficient access charges.<sup>6</sup>
- Advances the Act's policy of preserving a vibrant and competitive free market that presently exists for the Internet.<sup>7</sup>

AT&T mistakenly asserts that application of the exemption to its interexchange IP telecommunications service does not result in under compensation for its use of ILEC facilities to transport and terminate its toll calls. AT&T claims, without any factual basis, that this is because VOIP interexchange toll calling is only a tiny fraction of interexchange toll calling and local service charges or local reciprocal compensation fully compensates ILECs for the legitimate economic costs they incur to provide facilities.<sup>8</sup>

4. Even if IP telephony services are telecommunications services, AT&T claims that the Commission has not determined the type or level of "similar access charges" that would apply.<sup>9</sup>

5. AT&T incorrectly asserts that subjecting phone-to-phone IP telephony services to access charges would risk unlawful discrimination among services (computer-to-computer, computer-to-phone and phone-to-phone). AT&T argues that is not clear that there is an adequate and technologically sustainable basis for a distinction between these

---

<sup>5</sup> Id., pages 2, 4, 6, 13, 14, 16, 18, 25, 26.

<sup>6</sup> Id., pages 7, 8.

<sup>7</sup> Id., pages 7, 8.

<sup>8</sup> Id., page 8, 32.

<sup>9</sup> Id., page 3, 14, 26.

services. All phone-to-phone and all computer-to-phone calls are terminated in identical ways, in identical protocols, and over identical local exchange facilities.<sup>10</sup>

6. AT&T contends that it must make large investments in facilities to enable them to carry high quality voice offerings. In a blatant attempt to gain inappropriate concessions from the Commission, AT&T observes that a rule that authorizes IP interexchange toll providers to subscribe to local services rather than allegedly above cost access, can provide an initial economic reason to make these investments.<sup>11</sup>

7. AT&T wrongly asserts that it is exceedingly difficult, if not impossible, to determine if phone-to-phone calls are interstate and thus subject to interstate access charges or intrastate and subject to intrastate access charges. AT&T observes that many firms, unlike AT&T, do not pass the Calling Party Number (CPN) and thus the jurisdiction cannot be determined.<sup>12</sup>

**II. THERE IS NO BASIS FOR AT&T'S PETITION AND IT SHOULD BE  
DISMISSED BY THE COMMISSION**

**A. AT&T Is Not Using The Public Internet To Transport Its Service, but Instead Is Using A Private Network With IP Protocol For Transport. Its Service Is Not An Enhanced Or Information Service Subject To The ISP Internet Exemption, But Is An Interexchange Telecommunications Service Subject To Access Charges.**

AT&T's petition is simply an attempt by AT&T to avoid payment of lawfully tariffed access charge rates that it owes to ILECs for the use of their facilities to transport and terminate interstate or intrastate interexchange telecommunications toll traffic. The

---

<sup>10</sup> Id., pages 3, 6, 11, 28, 29, 30.

<sup>11</sup> Id., pages 1, 5, 10, 17, 18, 24, 25.

<sup>12</sup> Id., page 31.

traffic described by AT&T as interexchange IP telephony traffic is clearly interexchange telecommunications traffic and is not an information service provided by an Enhanced Service Provider (ESP) or Internet Service Provider (ISP). AT&T asserts throughout its petition that the issue is Internet “taxation” and application of the ESP or ISP exemption. These assertions are wrong. “Taxation” on Internet services or the ESP or ISP exemption is not at issue in this case because AT&T does not create an Internet enhanced service and does not even use the public Internet to transport its interexchange telecommunications toll service calls. Instead, AT&T is using its own network with IP protocol to transport its interexchange telecommunications traffic. AT&T then uses ILEC public switched network facilities to further transport and terminate these calls to customers. Application of tariffed access charges for the use of non-Internet ILEC public switched network facilities is not a tax on Internet enhanced services as AT&T claims, but instead is a legitimate tariffed charge for the telecommunications use of ILEC facilities by AT&T. Further, AT&T is not acting as an ESP or ISP when it provides IP telecommunications. AT&T is not providing or delivering content, but instead it is delivering voice long distance toll traffic that is exactly the same as any other toll call delivered via the public switched network that is subject to access charges. Consequently, AT&T is not providing an enhanced service and it is not even using the public Internet to transport its interexchange telecommunications toll calls. The method of transport selected by AT&T - public switched network facilities or AT&T IP protocol facilities - does not change the nature of the traffic from telecommunications to an enhanced service and thus the exemption does not apply to AT&T’s telecommunications service. AT&T brings up these issues in its petition in an attempt to obscure the fact that



it is only using IP protocol over its own private facilities and not the public Internet to transport its traffic. AT&T is simply trying to find any possible excuse to justify its refusal to pay access charges for the use of ILEC facilities to transport and terminate its interexchange calls.

**B. AT&T Is Purposefully and Fraudulently Misreporting Interexchange Traffic As Local Traffic In Order To Pay Local Termination Charges Rather Than The Applicable Access Charges.**

AT&T is also asking the Commission to sanction a fraudulent practice in which it is passing off its interexchange interstate and intrastate toll traffic as local traffic in order to pay lower local service or termination charges associated with local traffic. This petition results from the fact that AT&T has been caught at this practice by ILECs whose facilities AT&T is using. Apparently, AT&T believes that the best defense is to take the offensive. Consequently, in its petition, AT&T blames the ILECs who caught it at this practice and seeks Commission approval of its fraudulent arbitrage. AT&T admits that this traffic is, on an end-to-end basis, interexchange interstate or intrastate toll traffic. The end-to-end jurisdictional nature of the traffic has been verified by Verizon who examined the Calling Party Number (CPN) and determined that the AT&T calls were interstate or intrastate interexchange calls. The relevant question is not the difference in the level of access charges and local reciprocal compensation or the rate for a local business line, but the appropriate application of tariffed charges for the use of ILEC facilities for termination end-to-end interexchange AT&T calls. The AT&T interexchange IP telecommunications calls are not local calls and, pursuant to Federal and State Commission rules, AT&T may not obtain network access by purchasing a

business line or by paying local reciprocal compensation but must pay tariffed access charges for such calls.

**C. The Petition Must Be Dismissed. If Granted, It Would Destroy The Jurisdictional Ratemaking Process And The NECA Pool.**

Granting this petition would destroy the interstate versus intrastate ratemaking process and the NECA pooling process by allowing carriers to unilaterally arbitrage and reclassify interexchange traffic as local. Federal and State Commissions would no longer have any real authority to establish an effective interexchange versus local rate structure that could not be arbitrated and rendered ineffective. Likewise, ILECs would no longer be able to rely on access service tariffs to determine charges for their services. The NECA pool, which has been instrumental in maintaining rate stability in rural ILEC areas, would be destroyed because the arbitrage promoted by AT&T would, over time, eliminate interstate interexchange revenues associated with costs reported to the pool. Granting AT&T's petition would allow carriers such as AT&T to misuse the ratemaking process to misreport and misclassify traffic at will to the benefit of their bottom line and their stockholders. This result is clearly not in the public interest and is at odds with Section 254(k) of the Act. AT&T's actions would cause ILECs and their local customers to subsidize AT&T and its competitive interexchange telecommunications services. AT&T's petition, which seeks to have the Commission apply the ISP Internet exemption to this traffic and to treat this interexchange interstate or intrastate toll traffic as local traffic should be dismissed by the Commission.

**III. THE RATIONALE AT&T PROVIDES IN SUPPORT OF ITS PETITION HAS NO BASIS IN FACT AND DOES NOT SUPPORT GRANTING THE PETITION.**

**A. The Internet Will Not Be Harmed Or Taxed By Enforcing Application Of Access Tariffs On Phone-To-Phone IP Telecommunications Traffic.**

As AT&T discusses in its petition, Congress has a policy of fostering the growth of the public Internet. Congress turns this policy into action by refraining from levying taxes on ISP Internet retail services or on retail products and services offered via Internet websites. The Commission has also facilitated the growth of the public Internet by enacting and continuing the ISP Internet exemption for ISPs and their enhanced services. However, the issue AT&T raises in its petition is not an Internet issue. AT&T does not even use the public Internet to transport its retail product (interexchange telecommunications), but instead uses its own private network operating with IP protocol. AT&T is simply unwilling to pay the wholesale provider of facilities that AT&T uses to reach the customer for its services at its lawfully tariffed rate level – access charges. Wholesale access costs associated with originating and terminating interexchange calls are a legitimate cost of doing business for any IXC, including AT&T. This is not a problem of public Internet “taxation” as AT&T asserts, but simply a situation in which a retail service provider (AT&T) is trying, by inappropriately asserting that it uses the Internet and by gaming the process, to shortchange its wholesale provider, either by not paying them at all for the use of their facilities or by trying to force an inappropriate discount for the use of those facilities by masquerading, until caught, interexchange calling as local calling.

The business practice of trying to find any way to avoid payment for the use of an ILEC’s facilities is at best unethical and inappropriate and at worst a fraudulent attempt to avoid

lawfully tariffed charges. Sanctioning such behavior will encourage the type of corporate practices that led to recent corporate bankruptcies and in the end will only harm consumers and shareholders. The growth of ISP Internet services or web businesses will not be affected by enforcing the application of legitimately tariffed access charges that have been approved by the various Commissions to interexchange telecommunications traffic that uses IP protocol facilities, rather than the public switched network, for transport. This will in no way retard the growth of the Internet, as AT&T asserts, and does not constitute a tax on Internet information or data services. Access payments for the use of ILEC facilities are simply a cost of doing business that AT&T wants to avoid by any unethical means possible.

**B. Unsubstantiated Claims That Access Charges Are Above Cost Do Not Relieve The Commissions Of Their Responsibility To Enforce Approved Tariffs And AT&T Of Its Responsibility To Pay Approved Tariffed Rates For Interexchange Calls.**

There is no legal or ethical basis for AT&T to attempt to justify its actions - the attempt to avoid the obligation of legitimately and properly approved tariffed access rates for the use of ILEC facilities - by claiming that access charges are above cost, inflated, etc. If this was ever the case, the Commission's recent actions to reduce these charges for price cap and non-price cap ILECs should lay this tired argument to rest. The current nationwide average access rate is approximately one-half of a cent. Pooling ILEC access charges are clearly based on costs as justified to and approved by the Commission on a routine basis. If AT&T truly believes that access charges for pooling or non-pooling ILECs are not cost based, there is a legitimate process that it can use to challenge those

charges. AT&T is aware of these procedures and historically has intervened in tariff proceedings or filed petitions with the appropriate regulatory commission to challenge these charges. Likewise, there is absolutely no basis for Commissions not to enforce the access charge tariffs it has approved based on unsubstantiated and baseless claims that the rates are “above cost” or “uneconomic”.

AT&T wrongly claims that because there is currently only a minimal amount of interexchange traffic transported using its IP protocol transport facilities, further development of this transport would be blocked and the financial viability of that means of transport harmed if access charges were imposed on these interexchange calls. AT&T asserts that innovation and competition would be stifled while the amount of traffic is small and that access charges should only be applied when there is a “mature” amount of such transport. AT&T is wrong. All AT&T is doing is developing an alternate means of transport, for its interexchange calls. This new means of transport in no way changes the fact that the calls are interexchange and these calls, when originated from or terminated on ILEC networks do not differ from those that are transported by AT&T over the traditional switched network. Both types of transported calls still use the network facilities of ILECs to terminate AT&T’s calls to customers. The level of calling over either transport medium (IP protocol or traditional switched network) does not somehow justify paying a rate different from the tariffed rate – access charges – for the use of the ILEC’s facilities. The application of access charges to either means of transport, irrespective of the size of the interexchange level of calling, does not block the development of that means of transport by AT&T or harm its financial viability. It is clear that AT&T believes that transport of interexchange telecommunications over the IP

protocol facilities is efficient and cost effective and has decided to begin migrating its traffic from its traditional switched network facilities to the new transport facilities. As a largely unregulated company, AT&T is free, in a competitive market, to make these business decisions and it is difficult to believe that it would undertake this business decision without factoring in all of the costs, including the cost to terminate the calls at the legitimately tariffed rate – access charges. There is simply no reason for the Commission to grant AT&T, a largely unregulated company, a price break (discounted access) for any of its calls based on AT&T's decision as to the transport medium used. If AT&T has appropriately performed its business case for the alternative transport and included all costs of delivering its traffic (including access), then there is no reason for the Commission intervention that AT&T requests because the transport is financially viable. There is still no reason for Commission intervention if the transport is not as financially viable initially because of the smaller amount of interexchange telecommunications traffic that the new transport is carrying. AT&T clearly has plans to transport additional traffic and to use the IP transport facilities for additional services as part of the overall business plan. This migration strategy is AT&T's business decision and should not require subsidies via the intervention AT&T requests. If, on the other hand, AT&T improperly performed its business case and did not include all of the costs, there is no basis for the Commission to bail them out by providing them with an ongoing subsidy via a discounted access rate.

It is more likely that AT&T has designed a scheme to get a discounted rate by misreporting its interexchange traffic as local. By this scheme, AT&T could increase its margins or provide itself a competitive cost advantage vis-à-vis its competitors. Whether

because it was caught misreporting traffic or possibly, because it misstated its costs in an IP transport business case, AT&T should not be allowed to unilaterally decide which charges at what levels it will pay by misreporting its traffic. It should not be allowed, when caught, to claim, as an excuse for its actions and with no factual basis that the lawfully tariffed access charges, which have been approved by the various Commissions, are above cost. This assertion is simply the refrain of a provider that wants to avoid legitimate charges and obtain an inappropriate, unlawful and anticompetitive discount. The Commission must not approve and sanction this unethical and fraudulent behavior.

**C. The ESP Or ISP Exemption Is Not Applicable To AT&T's Interexchange IP Telecommunications Traffic. Applying The Exemption Would Result In An Unlawful Subsidy From Regulated Local Services To AT&T's Competitive Toll Service.**

The Internet ISP exemption does not apply to AT&T's IP telephony traffic on a "de jure" and "de facto" basis as AT&T asserts and claims and provides no basis to grant AT&T's petition. The exemption was put into place to assist the emerging ISP industry in the provision of enhanced services. The exemption does not apply to voice telecommunications services that use private IP protocol facilities as a means of transport and certainly does not apply to an industry giant such as AT&T. AT&T is simply trying to inappropriately shoehorn itself and its IP telephony transport into the ISP Internet exemption in order to fraudulently change the jurisdiction of the traffic and thus to receive a lower rate and an anticompetitive advantage.

At odds with AT&T's claims, below cost local service rates allowed by the exemption for use by ISPs, and quite likely local reciprocal compensation rates, if established based on

forward looking cost models, do not fully compensate the rural ILECs, and quite likely all ILECs, for the use of their facilities by AT&T to terminate interexchange calls. This assertion is simply an irrelevant and non-factual based argument made by AT&T to attempt to gain Commission sympathy in its attempt to avoid access charge rates. The assertion is simply not true and provides no basis for the Commission to grant AT&T's petition. In reality, by attempting to pay lower and often below cost local service or reciprocal compensation rates rather than access rates, AT&T itself is seeking a subsidy for its competitive interexchange toll service that is transported over IP protocol facilities. At odds with section 254(k) of the Act, that subsidy would flow from local exchange customers to AT&T's competitive toll service. For this reason alone, the Act requires that AT&T's petition be dismissed by the Commission.

**D. The Commission's Inaction On VOIP Petitions Does Not Absolve AT&T Of Its Responsibility To Pay Access Charges.**

At odds with AT&T's assertions in its petition, the Commission has had no reason to act on the issue of IP telephony telecommunications services because this traffic is interexchange interstate or intrastate traffic to which access charges apply based on legally approved tariffs. This lack of action does not support AT&T's claims that this traffic is an enhanced service simply because the service uses the IP protocol facilities for transport and thus is not subject to access charges. To the contrary, lack of Commission action to proscribe any rate other than access clearly demonstrates that the legitimately tariffed access rates that the various Commissions have approved are applicable to interexchange telecommunications toll services, irrespective of the means of transport utilized (IP protocol or public switched network). The "similar" access charges to which



the Commission previously referred, may and likely now are, the efficient and current access rates recently adopted by the Commission.

It is unfortunate that the ILECs are placed in the position by AT&T and likely other providers of policing the access charge regime as a result of the unethical and quite likely fraudulent practices of those carriers. ILECs are forced to spend time and money to insure that carriers such as AT&T are not misreporting traffic as local by terminating it via local service arrangements or, in collusion with a CLEC, via a local reciprocal compensation arrangement. This traffic should, as AT&T and the CLECs are fully aware, be terminated via Feature Group D (FGD) access facilities. The Commission should indeed set an example for the states, as AT&T requests, by now acting to enforce its own rules and its approved access tariffs. It should not sympathize with every attempt to avoid and arbitrage its own tariffs, but should clearly and unequivocally make it clear that these unethical and likely fraudulent practices will no longer be tolerated.

**E. Discrimination Claimed By AT&T, If It Exists, Can Be Resolved By Applying A “Leaky PBX” Surcharge, And Does Not Provide A Basis For AT&T To Obtain An Anti-Competitive Cost Advantage For Its IP Telecommunications By Avoiding Access Charges.**

AT&T claims that it should not be required to pay access charges when it uses an ILEC's facilities to terminate its interexchange IP telecommunications traffic because the interexchange traffic of computer-to-phone service providers that use the same facilities cannot be measured so that access charges can be applied. Consequently, AT&T claims if it pays access while its competitors, the computer-to-phone providers, pay local service charges, then AT&T will be at a cost disadvantage and in effect, discrimination in favor

of the computer-to-phone providers will occur. Assuming AT&T is correct, alleged discrimination between phone-to-phone and computer-to-phone telecommunications services does not provide a reason for AT&T to avoid its own responsibility to pay access charges for the use of an ILECs facilities to terminate its telecommunications traffic. Possible difficulties raised by AT&T in identifying computer-to-phone telecommunications calls, the interexchange nature of phone-to-phone IP telephony calls for carriers that do not provide the required (CPN), does not provide a basis for absolving carriers such as AT&T from paying Commission approved tariffed charges for interexchange calling. The problems with the other carriers and services should instead be addressed by the Commission.

The identification of computer-to-phone traffic is similar to the leaky Private Branch Exchange (PBX) problem the Commission faced when it was developing the access charge regime. Certain PBX providers were using their PBX's to terminate interexchange calls via local exchange services in order to avoid access charges. At the time, AT&T and other IXC's charged these providers with unfair discrimination and sought to have access charges applied to the interexchange traffic the PBX providers were "leaking" onto the network. To cure this problem, the Commission decided that the "leaky" PBX interexchange traffic filtering onto the network was incidental, and that "leaky" PBX providers that identified themselves as leaking this traffic onto the network (self-reported) should pay a \$25.00 per month surcharge per line for the use of the ILEC network. This same process will work with computer-to-phone service providers and would resolve AT&T's concern about discrimination. Computer-to-phone interexchange telecommunications calling, unlike phone-to-phone interexchange calling, is truly

incidental. Consequently, computer-to-phone providers who self-report could be charged a \$25 per month surcharge for the use of the ILECs network to transport and terminate their incidental traffic. Should this traffic become significant in volume, the Commission could revisit its decision.

**F. AT&T's Claim That It Must Make Large Investments In Transport Facilities Presents No Basis To Provide An Unlawful Subsidy For AT&T's Competitive Interexchange Service and For AT&T To Avoid Access Charges.**

The claim that it must make large investments to provide phone-to-phone IP telecommunications and must thus receive a discounted rate instead of paying access is a thinly veiled attempt at economic blackmail by AT&T and provides no basis to grant AT&T's petition. AT&T simply has a business decision as to how it wants to transport its telecommunications calls – via the traditional switched network or via IP protocol facilities. It should make its business decision based on legitimate costs, including access, as well as the possibility that it may gain efficiencies by also using its IP transport for data, etc. It should not, as a carrier that is essentially unregulated, plead that the Commission provide it an inappropriate and anticompetitive rate discount and unlawful subsidy or it might not invest in its network. AT&T's concern over its investment costs is particularly disingenuous in light of AT&T's clear lack of concern over the ability of ILECs to recover the large network investments they have, and continue to make to allow AT&T and other IXC's to transport and terminate their interexchange toll calls. AT&T's petition, if granted, and the resulting discounted transport and termination rate it would receive, would cause the network investments of ILECs to be un-recovered or under-recovered and would cause an unlawful subsidy to flow from local exchange consumers

to AT&T's competitive toll service. The investments AT&T may or may not make are purely its own business decision, do not require Commission intervention and do not provide any basis for the Commission to approve AT&T's petition.

**G. Problems In Determining The Jurisdiction Of Traffic Can Be Cured By Properly Routing The Interexchange Telecommunications Traffic Over FGD Facilities To The ILECs, As Required By The Access Charge Regime.**

Difficulty in determining the jurisdiction of interexchange telecommunications calls is not nor has it ever been a basis to absolve a carrier from its responsibility to pay access charges and does not support AT&T's petition. The only reason there is difficulty now in determining that AT&T's IP telecommunications calls are interexchange is that AT&T is misrouting these calls over ILEC local service facilities or in collusion with CLECs routing this interexchange traffic as local traffic. To stop this fraudulent practice, ILECs are forced to examine the calls to determine their end-to-end jurisdiction or to disconnect the local facilities over which AT&T is misrouting the traffic. The straightforward solution to the alleged problem AT&T claims exists is for the Commission to require that AT&T properly route all of its interexchange telecommunications toll traffic, including IP transported traffic, over FGD trunk facilities as required by the Commission's access charge regime.

#### IV. CONCLUSION

#### THE COMMISSION HAS A DUTY TO STOP UNETHICAL AND FRAUDULENT PRACTICES AND TO ENFORCE APPLICATION OF APPROVED ACCESS TARIFFED RATES TO ALL INTEREXCHANGE TELECOMMUNICATIONS TRAFFIC

This is a straightforward case of misreporting and misrouting of traffic by AT&T in order to attempt pay a lower local rate rather than access for the use of ILEC facilities to terminate AT&T's interexchange interstate or intrastate toll traffic. AT&T has manufactured numerous faulty and irrelevant claims and assertions to justify its actions that led to its petition. However, none of AT&T's claims, assertions or arguments support adoption of its petition by the Commission and therefore the petition must be rejected. The Commission must, however, take a number of actions as a result of AT&T's petition and the actions by AT&T that resulted in the petition. First, the Commission must set an example for the States, as AT&T requests, by immediately acting to enforce its own rules and its approved access tariffs to require that AT&T pay access charges for all interexchange telecommunications traffic, including traffic transported over IP facilities. It must also require that interexchange telecommunications traffic, whether transported over the public switched network or over the IP facilities, be routed for transport and termination over FGD facilities, not local exchange facilities. It should not sympathize with every attempt to avoid and arbitrage its own tariffs, as AT&T proposes, but should clearly and unequivocally order that these unethical and likely fraudulent practices will no longer be tolerated. Second, the Commission should investigate AT&T's admission that it purposefully and illegally is passing off interstate and intrastate interexchange calling as local traffic in order to pay a lower rate (either the rate for a local business line or local reciprocal compensation) than would lawfully be

applicable to the traffic. Because it has been caught in a blatant attempt to masquerade interexchange traffic as local traffic, AT&T blames the ILECs that caught them at this illegal and fraudulent practice and is attempting, through its petition, after the fact, to obtain Commission approval of a practice that is clearly at odds with the Commissions rules. Finally, the Commission should consider requiring computer-to-phone providers who self-report be charged a \$25 per month surcharge per line for the use of the ILEC's network to transport and terminate their incidental traffic. Should this traffic become significant in volume, the Commission could revisit its decision.

Respectfully submitted on behalf of the ILECs by,

---

Frederic G. Williamson  
President, Fred Williamson & Associates, Inc.  
2921 East 91<sup>st</sup> Street, Suite 200  
Tulsa, OK. 74137-3355  
Telephone: (918) 298-1618